

I. **OPENING**

CALL TO ORDER: The Planning Commission meeting of Lower Saucon Township Council was called to order on Thursday, November 16, 2006, 7:00 P.M., at 3700 Old Philadelphia Pike, Bethlehem, PA, with Mr. John Landis, Chair, presiding.

ROLL CALL: Present: John Landis, Chair; Gerry Szakmeister, Vice Chair; Fran LaBuda, Secretary; Hazem Hijazi; Craig Kologie; Tom Maxfield; Ken Miller, Engineer; Chris Garges, Zoning Officer; Marci Schneider, Solicitor; Rick Tralies, Boucher & James; Steve Kircher, Jr. PC Member. Absent – John Noble.

PLEDGE OF ALLEGIANCE

II. **PUBLIC COMMENT/CITIZEN AGENDA ITEMS**

III. **BUSINESS ITEMS**

A. **SMITH BROTHERS DEVELOPMENT LLC – DRAVITZ PRELIMINARY MAJOR SUBDIVISION #MAJ-02-06 – 2845 COUNTY LINE ROAD (TIME LIMIT 02/12/07)**

Present Dan Smith, Terry Smith, Kevin Horvath, and David Martin. Mr. Landis said they will go over the HEA and Boucher & James letter.

Mr. Horvath said Comment 4B, basically indicates we have proposed one of our infiltration areas to be partially located within the proposed open space. This reverts back to the question of whether or not the township would be willing to accept this as open space or whether it would be deeded as undevelopable and revert back to the proposed adjacent lots. If that's the case, this issue would go away. If not, our concern is that we had previously gotten clearance that yes, it would be okay for an underground structure to be located within the open space.

Mr. Tralies said he doesn't think it's going to end up being a major issue as the development has proposed far more open space than they are actually required. We're dealing with an issue and seeing more development come in with open space. We're still trying to figure out, as a township, what do we want to permit in the open spaces as far as storm water management goes. He feels it would be pretty easy for the applicant to just show on the plans that they are still proposing enough open space to meet all the requirements, and also note that they don't need to count that area that is storm water management as part of their open space. He wants to try to avoid situations where another developer comes in later and says you let these guys get away with having storm water management count as their open space. He doesn't have a big problem with the arrangement of where things are, he'd just like them to call out clearly that they have enough open space if they subtract out the storm water management areas.

Mr. Landis said as long as some other developer doesn't come in and say open space is for drainage, we don't have to provide it on our property at all. Mr. Horvath said that being said, that issue is a lot less concerning, but it still brings us to the point, has there been any recommendation by any committees whether the township would be interested in this open space. There is a portion of the open space on the west side of the project where they initially discussed deed restricted the two parcels and conveying them to two adjacent land owners and would like to get some sort of official recommendation by the PC to the board either way so they know what direction this is likely to go so they can plan accordingly. They do need the open space on the west to make the percentages. Mr. Landis said this is a Council decision. Mr. Smith said can it be deed restricted as

**Planning Commission Meeting
November 16, 2006**

two owners of the houses below the lots have expressed interest in purchasing each piece and permanently deed restrict them to never putting anything on the lots. He doesn't know if it's just having the wording. It's still open space attached to the overall project, but it will never be touched.

Mr. Hijazi said how has the township in the past dealt with open space? Mr. Maxfield said limited ways. One of the things is those two parcels would be isolated from access for the township. What you are looking for is a different treatment between those and maybe like a conservation easement on the east side and deed restriction being enough on the west side. Ms. Szakmeister said there won't be access. Mr. Smith said that's why they wanted to approach it this way because there's no real way to get to those areas. Ms. Szakmeister said the big question is who is going to maintain this?

Mr. Maxfield said on the two western properties, if sometime in the future there was a problem with them filing a deed restriction, who would be the enforcement agency? Would that be the Township? Can that be stipulated? Mr. Garges said Linc said in the past that the township could be a third party. Attorney Schneider said because in order for it to count towards the open space for the development, the underlying ground still has to belong to the development. The ownership can't be conveyed to those adjacent people or else you conveyed it out of the development.

Mr. Kologie said with deed restrictions, it's his understanding that anybody could enforce a deed restriction. It's just a matter who is going to pay for the legal defense of fighting the battle. With regards to transferring that area to an adjoining property owner, that's a possibility but it's a matter of what's the intent of that area in terms of what it's going to look like. Will it become part of that person's yard, and is that really open space as what the township intended or was that intended to be more of an area left to go on its own?

Mr. LaBuda said once you cut off the property and give it to someone else, and even have a deed restriction on it, it's not your property anymore, so how could you calculate anything on it. Mr. Kologie said what does the ordinance say with regards to ownership of open space. That should describe different forms of ownership that are permitted and private ownership might be a permitted use. Ms. Szakmeister said it's got to be offered and it has to have the right amount offered, and it must go to Council to decide if they want to keep it or not. If they don't want it, it will have to be maintained by a homeowner. Mr. LaBuda said it would be up to the township to enforce that deed restriction and that would cost us money. No, it would cost whoever is going to develop it. Why should we pay. You don't know that in the future. Mr. Kologie said if there's an easement or a restriction, someone still has to monitor if that's being followed. Mr. Landis said there's a legal point here. Attorney Schneider said her comment came from a place thinking that when you pointed to the map over here, she thought what he was saying was that these two homeowners are not part of your development, and they are saying they are not. That's where her concern arises. If you were trying to attach this to something already in your development, then logically, she can understand how you can accommodate that, but if now, it's going to be attached to people who aren't part of your development, that's where she's getting a little cloudy. The way Mr. Landis explained it seems logical as well as if a developer comes to you and says here it is, we're going to restrict it, we're not going to let it be developed, and these individuals who are outside of the development are willing to take ongoing maintenance and financial responsibility, it will travel always with a covenant with their land, so if they ever convey, then whoever buys from them is also held to be responsible for this. Then, maybe it's okay.

Mr. Maxfield said you are back to enforcement again. Eventually whatever happens to the ownership on the right hand side of the property, both sides could be included together. That way you bypass the whole transferring of ownership to somebody and whoever is going to basically

**Planning Commission Meeting
November 16, 2006**

own the left side could own the right side. You could treat the two differently. You could give access, enjoyment and maintenance responsibility to those property owners and have a different set of parameters for the other side which is the bigger chunk of open space. That way they would still be able to enjoy it. They wouldn't be owners, but they would act as if they were. You have to offer that to the township. If they don't take it, then whoever the owner is of the open space could own the entire chunk of open space, or it could be attached to the different parameters from west to east.

Mr. LaBuda said you give it to the township for open space, but you are going to sell it to those two people or are you going to give it to them? Mr. Horvath said they don't if the township wants it. Mr. LaBuda said then you'd sell it to those two individuals. Mr. Horvath said yes.

Mr. Horvath asked if Mr. Tralies knew if the land was valuable as open space to the township? Mr. Tralies said we don't have any issue with the land being deed restricted to a private owner. For them, you have to ask yourself, what is more important to you – who owns the land or what's happening to the land. If it's being preserved as open space, then you can say its open space regardless of whose name is on the dotted line. If you look at the deed restricted open space, and you look at the two lots in front of it that would possibly own it, the existing lot owners, would have in the same effect, the same rights to the deed restricted area as two of the new lots would have to the larger open space. The ownership would be different, but just like new lots can't go in and put sheds on the other open space, the existing lots can't do anything with the deed restricted areas either assuming the deed restriction says that. Mr. Maxfield said can a deed restriction accomplish those things that we want to accomplish? Mr. Tralies said it probably can, they do it in other townships. Mr. Maxfield said it does make sense. Mr. Horvath said are you comfortable that a deed restriction could accomplish those goals? Attorney Schneider said no, as she's not well versed enough in exactly what we want to accomplish. She doesn't know if we have specific conservation goals or if our goal is just to keep it mowed, forestation, deforestation, mowing, meadow of grass – what do we care about? Is that part of our ordinance? She doesn't know. Mr. Maxfield said he can tell you very simply, we want it to stay open and wild and we don't want to maintain it at all. Attorney Schneider said are you going to leave it up to the homeowner that would take it to determine right now if it's a plowed field, what are they going to do with it? Are they going to let it turn into weeds, grade it and seed it, or plant trees, do we care. You can tell these homeowners anything you want to with regard what your goals are for that land, but obviously, they are going to have to consent to put in that investment. Mr. Kologie asked what the acreage was. Mr. Horvath said the left is 1.4 and the other sliver is .8. Mr. Kologie said potentially a 1 ½ acre lot, that's not that much to mow. They might just want to increase their yard there.

Mr. Maxfield said the real question is once we decide exactly what it is we want, will the deed restriction be able to accomplish that. That's all he really cares about. Attorney Schneider said she's assuming it could. She just wants to have a caveat that unless she knows exactly what it is that we want accomplished on there, she's not comfortable saying a deed restriction is good enough. We may need a full blown conservation easement over it, she doesn't know.

Mr. Smith said can't we just say no buildings can be built on that or are we just trying to preserve the land so that no more impervious coverage is taken up? If they want to mow it, why wouldn't they be able to mow it. Now it's a field with grass. Attorney Schneider said if the township moves more and more towards being built out and more and more of these properties become homeowners or businesses that are trying to maintain their grass and lawn, they are not going to want several acres full of invasive weeds in their backyard and there's nobody responsible for cleaning that up. Who is going to be responsible for taking all those weeds out and going to the expense of seeding it and putting it into grass in the future if somebody isn't happy about it. Mr. Maxfield said we might be getting into an area here where we really shouldn't be getting into as the Township has specific ideas about wild areas and meadows and fields anyway, and about maintenance of those kinds of

**Planning Commission Meeting
November 16, 2006**

things. We'll be avoiding as much lawn as possible. We don't want sheds, another subdivision and keeping it as rural as possible and as long as that's what the deed restriction says. Mr. Landis said there's a legal issue here that has to be addressed and how the language would be on the deed restriction and that has to be done with Council and the Solicitor.

Mr. Maxfield asked Mr. Tralies if he could get a hold of a sample deed restriction for them like in the other townships he mentioned earlier. Mr. Tralies said he would.

Mr. Smith said you had asked at the last meeting what is their preference, would we prefer open space or would we prefer having it deed restricted. I think now as we go along further, he would almost prefer to attach it to the lots. If they aren't going to accept it, and the township probably won't because it doesn't have good access, it's a cliff and it's a forest. If we have the homeowners of the two lots split it in the middle, that's what he'd like to do with the land. He knows they have to present it as open space, but they also would like to present it as this is what we'd like to do. We want to deed the land, but we also want to do it right. It's not big enough to have a HOA and it would be too costly for four houses, it doesn't make sense. Again, Council has to make the decision on this.

Mr. Smith said he's concerned regarding a request of a waiver of property 500 feet around the lot because Mrs. deLeon always wonders why it's always an item. He watched the Council explain to her that it's in a rural area and there's basically nothing there, so 500 feet of nothing for maybe a few wells or septic. She doesn't understand why it's always being waived. Mr. Hijazi said he hasn't been on this board for long, but almost every developer that comes in here asks for a waiver. Ms. Szakmeister said many cases the 500 foot thing is waived because the adjoining properties have already done the identifying. Mr. Kologie said many times you have a storm water basin that discharges near a property line and it shows there maybe some swale there that the water is going into, but it's always nice to see does that swale make it to a water course or where does that really go. That's why it's in there and it's important that we keep it there. It wouldn't be hard to just take US GS contours and throw them on there to supplement your flowing topography. It would be easy to throw in a plan and not have to ask for the waiver too. Mr. Hijazi said he's not advocating removing the waiver. Mr. Kologie said there is US GS information out there that is free and could be thrown on an overall plan and meet the requirement without asking for a waiver and having to go through an explanation. Ms. Szakmeister said how do we identify if our natural resources have already been identified in that study, how do we know if there's any on their property? Mr. Maxfield said we have it logged into the GIS system, so we can always reference it and see if we're close. Mr. Hijazi said how much cost are we talking about you complying with the 500 feet? Mr. Horvath said it could be done with field survey with conventional equipment or GPS or an actual man in the field, acres, days, it's a lot of time. Mr. Hijazi said how about aerial? Mr. Horvath said if it was done from the get go – not a lot, but it just wasn't and that's why they are in the predicament they are. Mr. Maxfield said we've accept aerals most of the time. Mr. Maxfield said don't worry, we'll explain it to Mrs. deLeon. He said before it gets before Council, for approval, that as much be done and accomplished, and get it as clean as possible.

MOTION BY: Mr. Kologie moved to recommend waivers of Section 145-33C1 and Section 145-33C2 as described in the November 15, 2006 letter from Keystone Consulting Engineers.

SECOND BY: Mr. Maxfield
Mr. Landis asked if anyone in the audience had any questions or comments? No one raised their hand.

ROLL CALL: 6-0-1 (Mr. Noble – Absent)

MOTION BY: Mr. Maxfield moved, with the addition of the one condition stated earlier about accomplishing as much as possible on the plan. He'd like to recommend to Council that they grant a

**Planning Commission Meeting
November 16, 2006**

preliminary major subdivision approval for this development, subject to the HEA letter from November 8, 2006, and the Boucher & James letter from November 6, 2006.

- SECOND BY:** Ms. Szakmeister
Mr. Landis asked if anyone in the audience had any questions or comments? No one raised their hand.
- ROLL CALL:** 6-0-1 (Mr. Noble – Absent)

Mr. Miller asked if there was any discussion on the 24' road width as right now its 28'? Mr. Maxfield said they made that recommendation last time, or maybe it was EAC. Mr. Smith said EAC made the recommendation and they went to Council, but we were a little bit premature because the plan wasn't in front of Council, so they didn't know what they were looking at.

- MOTION BY:** Mr. Hijazi moved for approval of Section 145.45B4C4, the road going from 28' to 24'.
- SECOND BY:** Mr. Maxfield
Mr. Landis asked if anyone in the audience had any questions or comments? No one raised their hand.
- ROLL CALL:** 6-0-1 (Mr. Noble – Absent)

B. FOUNTAIN HILL COMPREHENSIVE PLAN REVIEW

Mr. Landis said this was done pretty well. Mr. Tralies said he's still in the process of reviewing it. He's about half way through it. So far, it seems to be very typical. They are focusing on improving their park and rec and open space, they want to protect natural resources, encourage proper development including traditional neighborhood design. From what he's seen, they seem to be saying all the right things. Dan has informed him that they are also looking to put strong restrictions on areas with steep slopes over 25% and a lot of these areas border LST. Those areas will be important to us as well. He'll make further comment on it after he finishes reading it. Mr. Miller said the majority of the border with LST is 15%+ slope and they are actually proposing that they will create legislation that will prohibit development on 25% or greater and restrict that on lesser zoning. The majority of the 25% is on the corner of Fountain Hill opposite of LST. The majority of the 15% is adjoining LST. Do we have a trail path that can connect into Puggy Lane? Mr. Landis said there are all kinds of trail paths from the Fountain Hill Park with the spring, but he doesn't Lower Saucon has any. Mr. Miller said they are proposing a walking path to connect from Salisbury over to Puggy Lane where it connects with LST. Mr. Landis read the whole thing and there is a lot in it. Mr. Maxfield asked Mr. Garges to look into it and see if there's any possibility of a trail in that area. Mr. Garges said he would check into it.

- MOTION BY:** Mr. Maxfield moved to recommend to Council that they relay the PC's comments of no general conflict with the Fountain Hill Comprehensive Plan.
- SECOND BY:** Mr. LaBuda
Mr. Landis asked if anyone in the audience had any questions or comments? No one raised their hand.
- ROLL CALL:** 6-0-1 (Mr. Noble – Absent)

C. NATURAL RESOURCE PROTECTION ORDINANCE AMENDMENT REVIEW

Mr. Landis said it's basically just changes to the ordinance. Mr. Maxfield said they recommended that one provision in here, Section 6, was looked at by Terry Clemmons and that is the 100 foot from intermittent streams. There were some questions from municipalities to the south that could be challenged. Our Solicitor that works for the EAC is also Solicitor for Springfield. They were proposing the same thing for intermittent streams and he offered his objections to it, so they thought they'd better have him look at it. Mr. Kologie asked if intermittent stream was defined anywhere. Mr. Tralies said he thought the same thing and struggled with it greatly. He went to a

**Planning Commission Meeting
November 16, 2006**

source book of municipal definitions and thought it was adequate to include a definition of water course that includes intermittent within that definition, and that's in Section no. 2. Ms. Szakmeister said if you are looking it up alphabetically, and you want to try to find intermittent, then you have to read everything to see if it's in there. We really identify it as a specific thing if we give it some definition. Mr. Kologie said under that scenario, with water course defined, wouldn't we just narrow section 8 to say riparian buffers shall include all within 100 feet of any water course? You don't have to say intermittent. Mr. Tralies said we could do that. The way this came about was when we previously wrote this ordinance, the riparian buffer the way it was worded applied to waters of the U.S. and waters of the Commonwealth. Then after a few developments went through, we realized that definition was a little bit too narrow. When we took this crack at it, we expanded it to say perennial and intermittent water courses as well. Now it might be a little bit redundant and it was going from being not enough to now maybe it is a little bit redundant. You're right, we could back off and take out the words perennial and intermittent, the way it was written before. He wouldn't disagree with your recommendation if everyone agrees with you. Mr. Kologie said on reducing the buffer, intermittent streams might be a first order stream and those are very important in terms of the watershed, so he doesn't think you'd want to try and reduce the buffer. Mr. Maxfield said during Ivan we had considerable damage from intermittent streams. We can make that recommendation to keep it. Mr. Garges said under Section 3, the applicant for any subdivision land development or building permit, shall be required to identify all natural resources on the lot when submitting an application. Basically for anything you want to do, it's requiring any applicant for a building permit to do an inventory. There is some burden being placed like someone who has a 25 acre site who wants to put a shed on it. He would have to go through a significant hardship to come up with something. He doesn't know if there are any exemption criteria you would want to think of, but he wanted to throw that out. Now he does it with the GIS and if there's a problem, he says you got to put some effort into it and show that you can comply. That's the way it's handled right now. He wanted to make you aware if we follow this to the letter of the law, it's a significant burden to the homeowner. Right now we're working through that. Anytime you introduce judgment into law, there's always going to be people that disagree and he has to tweak this a little bit. He has the ability to do what he needs to do when we need to do it, but there's judgment call on his shoulders then.

- MOTION BY:** Mr. Hijazi moved for recommendation to Council of the Natural Resource Protection Ordinance Amendment to approve the change.
- SECOND BY:** Mr. LaBuda
Mr. Landis asked if anyone in the audience had any questions or comments? No one raised their hand.
- ROLL CALL:** 6-0-1 (Mr. Noble – Absent)

D. PARK & RECREATION FEES IN LIEU OF LAND DEDICATION AMENDMENT REVIEW

Mr. Miller said the fee is now \$3,310.

- MOTION BY:** Ms. Szakmeister moved for recommendation of approval of the park and recreation fees in lieu of land dedication.
- SECOND BY:** Mr. Maxfield
Mr. Landis asked if anyone in the audience had any questions or comments? No one raised their hand.
- ROLL CALL:** 6-0-1 (Mr. Noble – Absent)

IV. MISCELLANEOUS BUSINESS ITEMS

A. APPROVAL OF MINUTES – OCTOBER 19, 2006

**Planning Commission Meeting
November 16, 2006**

MOTION BY: Mr. Hijazi moved for approval of the October 19, 2006 minutes.
SECOND BY: Mr. LaBuda
Mr. Landis asked if anyone in the audience had any questions or comments? No one raised their hand.
ROLL CALL: 6-0-1 (Mr. Noble – Absent)

Mr. Garges said the September minutes approved last month, there was a typo they caught regarding the Heritage Minor Subdivision approval. One of the things we talked about it was a preliminary only and it was transcribed as preliminary final and that change was made in the minutes.

B. REVIEW/COMMENT OF 2007 MEETING DATES

Mr. Landis said the meeting dates are the third Thursday of the month at 7:00 PM.

MOTION BY: Mr. Hijazi moved for approval of the 2007 meeting dates.
SECOND BY: Mr. Kologie
Mr. Landis asked if anyone in the audience had any questions or comments? No one raised their hand.
ROLL CALL: 6-0-1 (Mr. Noble – Absent)

V. PUBLIC COMMENT/CITIZEN NON-AGENDA ITEMS

Mr. Landis asked if there was any public comment? No one raised their hand.

VI. ADJOURNMENT

MOTION BY: Mr. LaBuda moved for adjournment. The time was 8:15 PM.
SECOND BY: Ms. Szakmeister
Mr. Landis asked if anyone in the audience had any questions or comments? No one raised their hand.
ROLL CALL: 6-0-1 (Mr. Noble – Absent)

Submitted by:

Mr. John Landis
Chair